



Australian Capital Territory

Domestic Violence and Protection Orders Act 2008

A2008-46

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Australian Capital Territory

Domestic Violence and Protection Orders Act 2008

A2008-46

An Act about orders to protect people from domestic violence and personal violence, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Part 1 Preliminary

1 Name of Act

This Act is the *Domestic Violence and Protection Orders Act 2008*.

2 Commencement

This Act commences on 30 March 2009.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

3 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition '*firearm*—see the *Firearms Act 1996*, section 4A.' means that the term 'firearm' is defined in that section and the definition applies to this Act.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

4 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 Criminal Code

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 Penalty units

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

Part 2 Main principles and concepts

6 Objects of Act

The objects of this Act include—

- (a) to prevent violence between family members and others who are in a domestic relationship, recognising that domestic violence is a particular form of interpersonal violence that needs a greater level of protective response; and
- (b) to facilitate the safety and protection of people who fear or experience violence by—
 - (i) providing a legally enforceable mechanism to prevent violent conduct; and
 - (ii) allowing for the resolution of conflict without the need to resort to adjudication.

7 Principles for making protection orders

- (1) In deciding an application for a protection order, the paramount consideration is—
 - (a) for a domestic violence order—the need to ensure that the aggrieved person, and any child at risk of exposure to domestic violence, is protected from domestic violence; and
 - (b) for a personal protection order (other than a workplace order)—the need to ensure that the aggrieved person is protected from personal violence; and
 - (c) for a workplace order—the need to ensure that employees and other people at the workplace are protected from personal violence at the workplace.

- (2) If a protection order is to be made on an application under this Act, it must be the protection order that is least restrictive of the personal rights and liberties of the respondent as possible that still achieves the objects of the Act and gives effect to subsection (1).

8 Principle about procedures

Procedures under this Act are to be as simple, quick and inexpensive as is consistent with achieving justice.

9 What may someone do under this Act?

- (1) A person may apply under this Act for an order to protect an aggrieved person from domestic violence or personal violence by someone else (the *respondent*).

Note 1 Section 18 and s 68 set out who can apply for a protection order.

Note 2 Section 20 limits who can be named as a respondent to a protection order.

Note 3 Violence is defined in the following sections:

- s 13 (What is *domestic violence* etc?)
- s 14 (What is *personal violence*?)
- s 50 (What is *personal violence* for a workplace?).

- (2) Two types of protection order are available, a domestic violence order (see section 10) and a personal protection order (see section 11).

10 What conduct do domestic violence orders restrain?

- (1) A domestic violence order may be made as a final, interim or emergency order.

Note The general rules applying to applications for orders are in pt 3. Rules applying to particular kinds of orders are in the following parts:

- pt 4 (Interim orders)
- pt 5 (Consent orders)
- pt 6 (Final orders)
- pt 9 (Emergency orders).

- (2) A *domestic violence order*—

- (a) restrains the respondent from engaging in conduct that constitutes domestic violence in relation to the aggrieved person; and
- (b) may include a prohibition mentioned in section 48 (What final orders (other than workplace orders) may contain).

Note A prohibition mentioned in s 48 may be included in an interim order (see s 35) or an emergency order (see s 76).

11 What conduct do personal protection orders restrain?

- (1) A personal protection order may be made as a final or interim order.
- (2) A personal protection order made as a final order may be made as a workplace order or a final order other than a workplace order.

Note Workplace orders are dealt with in div 6.2.

- (3) A *personal protection order* that is a workplace order—

- (a) restrains the respondent from engaging in conduct that constitutes personal violence in relation to the workplace; and
- (b) may include a prohibition mentioned in section 54 (What workplace orders may contain).

- (4) A *personal protection order* (other than a workplace order)—
- (a) restrains the respondent from engaging in conduct that constitutes personal violence in relation to the aggrieved person; and
 - (b) may include a prohibition mentioned in section 48 (What final orders (other than workplace orders) may contain).

12 Do protection orders cover conduct outside ACT?

A protection order covers conduct within or outside the ACT.

13 What is *domestic violence* etc?

- (1) For this Act, a person's conduct is *domestic violence* if it—
- (a) causes physical or personal injury to a relevant person; or
 - (b) causes damage to the property of a relevant person; or
 - (c) is directed at a relevant person and is a domestic violence offence; or
 - (d) is a threat, made to a relevant person, to do anything in relation to the relevant person or another relevant person that, if done, would fall under paragraph (a), (b) or (c); or
 - (e) is harassing or offensive to a relevant person; or
 - (f) is directed at a pet of a relevant person and is an animal violence offence; or
 - (g) is a threat, made to a relevant person, to do anything to a pet of the person or another relevant person that, if done, would be an animal violence offence.

Note **Relevant person**—see s 15 (1).

(2) In this Act:

domestic violence offence means an offence against—

- (a) section 90 (which is about contravening protection orders); or
- (b) a provision mentioned in an item in schedule 1 (Domestic violence offences against other legislation) of an Act mentioned in the item.

(3) In this section:

animal violence offence means an offence against any of the following provisions of the *Animal Welfare Act 1992*:

- (a) section 7 (Cruelty);
- (b) section 7A (Aggravated cruelty);
- (c) section 8 (Pain);
- (d) section 12 (Administering poison);
- (e) section 12A (Laying poison);
- (f) section 13 (Electrical devices).

offence, other than in relation to the *Public Order (Protection of Persons and Property) Act 1971* (Cwlth), section 11 (Additional offences on premises in a Territory), includes conduct, engaged in outside the ACT, that would be an offence if it were engaged in within the ACT.

personal injury includes nervous shock.

14 What is *personal violence*?

- (1) For this Act (other than for division 6.2), a person's conduct is *personal violence* if the person—
- (a) causes personal injury to someone (the *aggrieved person*) or damage to the aggrieved person's property; or
 - (b) threatens to cause personal injury to the aggrieved person or damage to the aggrieved person's property; or
 - (c) is harassing or offensive to the aggrieved person.

Note *Personal violence*, for a workplace—see s 50.

- (2) However, a person's conduct is not *personal violence* if it is domestic violence.

15 Who is a *relevant person* etc?

- (1) For this Act, *relevant person*, in relation to a person (the *original person*), means—
- (a) a domestic partner of the original person; or
- Note* A *domestic partner* need not be an adult (see Legislation Act, s 169).
- (b) a relative of the original person; or
 - (c) a child of a domestic partner of the original person; or
 - (d) a parent of a child of the original person; or
 - (e) someone who is in a domestic relationship with the original person.
- (2) For this Act, a *relative* of a person (the *original person*)—
- (a) means the original person's—
 - (i) father, mother, grandfather, grandmother, stepfather, stepmother, father-in-law or mother-in-law; or

- (ii) son, daughter, grandson, granddaughter, stepson, stepdaughter, son-in-law or daughter-in-law; or
 - (iii) brother, sister, half-brother, half-sister, stepbrother, stepsister, brother-in-law or sister-in-law; or
 - (iv) uncle, aunt, uncle-in-law or aunt-in-law; or
 - (v) nephew, niece or cousin; and
- (b) if the original person has or had a domestic partner (other than a spouse)—includes someone who would have been a relative mentioned in paragraph (a) if the original person had been legally married to the domestic partner; and

Note **Domestic partner**—see the Legislation Act, s 169.

- (c) includes—
- (i) someone who has been a relative mentioned in paragraph (a) or (b) of the original person; and
 - (ii) anyone else who could reasonably be considered to be a relative of the original person.

Examples—par (c) (ii)

- 1 if the original person is an Aboriginal or Torres Strait Islander, the following people:
 - (a) a person the original person has responsibility for, or an interest in, in accordance with the traditions and customs of the original person's Aboriginal or Torres Strait Islander community;
 - (b) a person who has responsibility for, or an interest in, the original person in accordance with the traditions and customs of the original person's Aboriginal or Torres Strait Islander community
- 2 a person regarded and treated by the original person as a relative, for example, as an uncle or aunt

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) In this section:

domestic relationship—see the *Domestic Relationships Act 1994*, section 3.

16 Level of satisfaction required for this Act

If the Magistrates Court or a judicial officer is required to be satisfied about something under this Act, the court or judicial officer must be satisfied on the balance of probabilities.

Note *Judicial officer*—see the dictionary.

17 This Act and Children and Young People Act

- (1) This section applies if—
- (a) an application is made under the *Children and Young People Act 2008* for a care and protection order; and
 - (b) at least 1 of the grounds mentioned in that Act, section 460 (1) (b) (DVPO final protection orders) is satisfied; and
 - (c) the Childrens Court makes a protection order.
- (2) The Childrens Court is taken to have exercised jurisdiction under this Act as the Magistrates Court when making the protection order.
- (3) The protection order may be amended, revoked or appealed from under this Act.

Part 3 Applications generally

18 Who may apply for certain non-emergency orders?

- (1) An aggrieved person may apply to the Magistrates Court for a non-emergency protection order.

Note 1 If a form is approved under the *Court Procedures Act 2004* for an application under this section, the form must be used.

Note 2 Different rules may apply to an aggrieved person with a legal disability (see s 19).

Note 3 An aggrieved person for a workplace order is the employer, not the person who has suffered the violence (see dict, def *aggrieved person*).

- (2) Also, a police officer may make an application for an aggrieved person, or help an aggrieved person to make an application.
- (3) This section does not affect any other right of a person to make an application for a non-emergency protection order for an aggrieved person.

Example—people with right to make application for protection order

a parent or guardian of a child who is an aggrieved person, or an agent of an aggrieved person

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

19 Party with legal disability

- (1) An aggrieved person with a legal disability (other than a child) may apply for a non-emergency protection order—
 - (a) by a litigation guardian; or
 - (b) in the person's own right with the Magistrates Court's leave.

Note A regulation may prescribe how a litigation guardian may be appointed (see s 118 (3) (b) (i)).

- (2) If a respondent to a non-emergency protection order is a person with a legal disability, the respondent must have a litigation guardian.
- (3) An aggrieved person who is a child may apply for—
 - (a) any protection order by a litigation guardian; or
 - (b) a domestic violence order in the person's own right; or
 - (c) a personal protection order in the person's own right with the Magistrates Court's leave.
- (4) The Magistrates Court must give leave for an application under subsection (1) (b) or subsection (3) (c) if satisfied that the aggrieved person—
 - (a) understands the consequences of applying for a protection order; and
 - (b) will understand the proceeding on the application.

20 Certain children not respondents

A child younger than 10 years old cannot be a respondent for an application for a protection order.

21 Application forms that require aggrieved person's address

- (1) This section applies if a form approved under the *Court Procedures Act 2004*, section 8 (Approved forms) for an application for a protection order requires the aggrieved person's home or work address to be included in the application.
- (2) The address need not be included in the application unless the aggrieved person agrees to the address being included.

22 Registrar sets return date

- (1) On receiving an application for a non-emergency protection order, the registrar must—
 - (a) enter the application into Magistrates Court’s record; and
 - (b) set a return date for the application.
- (2) The return date must be—
 - (a) not later than 2 days after the day the application is made; or
 - (b) not later than 10 days after the day the application is made if—
 - (i) the applicant is not seeking an interim order on the application; and
 - (ii) the registrar is satisfied that the longer time is necessary to allow the respondent to be served with the application and the return date notice.
- (3) However, a regulation may prescribe the circumstances in which the registrar need not, or must not, accept an application for entry into the Magistrates Court’s record under this section.

Note For service of an application, see s 63.

23 Registrar may adjourn proceedings etc

- (1) This section applies if—
 - (a) a return date has been set for an application for a non-emergency protection order; and
 - (b) the respondent has not been served with a copy of the application under section 63 (Service of applications).
- (2) The registrar may adjourn the proceeding on the application.

Note The registrar may also extend any interim order (see s 42).
- (3) However, the registrar may not adjourn the proceeding under this section more than twice.

24 Preliminary conferences

- (1) The registrar must hold a preliminary conference in relation to an application for a non-emergency protection order.
- (2) However, a regulation may prescribe when the registrar need not hold a preliminary conference.
- (3) A regulation may also prescribe—
 - (a) the objects of a preliminary conference; and
 - (b) the powers that may be exercised by the person holding a preliminary conference; and
 - (c) the admissibility in evidence of anything said, or any evidence given, at a preliminary conference.
- (4) The failure of the registrar to hold a preliminary conference in relation to an application for a non-emergency protection order does not affect the validity of the protection order.

25 Referrals to mediation

- (1) This section applies if, at any time during the preliminary conference for an application for a non-emergency protection order, the registrar is satisfied that the application is likely to be more effectively resolved by mediation than by a hearing.
- (2) The registrar must—
 - (a) recommend to the parties to the application that they seek mediation; and
 - (b) give the parties information about mediation; and
 - (c) adjourn the preliminary conference until a stated date to allow for mediation to happen.

26 Preparation for hearings in Magistrates Court

- (1) This section applies to an application for a non-emergency protection order if—
 - (a) a preliminary conference has been held in relation to the application; and
 - (b) no consent order has been made as a result of the conference.
- (2) On or before the return date for the application, the registrar must—
 - (a) prepare the following documents for the hearing of the application:
 - (i) a statement about who will give evidence at the hearing;
 - (ii) a statement about how long the hearing is likely to be;
 - (iii) a summary of the issues agreed to, and not agreed to, by the parties at the conference; and
 - (b) give the respondent a statement to the effect that if the respondent does not attend the hearing, the Magistrates Court may decide the application in the respondent's absence.
- (3) The registrar may do anything else to assist the hearing of the application that the registrar considers appropriate on or before the return date.
- (4) A regulation may prescribe other powers of the registrar to allow the registrar to exercise a function under this section.

27 What if applications are made for the wrong order?

- (1) This section applies if—
 - (a) a person applies for a protection order that is a domestic violence order or a personal violence order (the *first order*); and
 - (b) the first order may not be made because the conduct on which the application is based is not conduct that the first order could restrain; and
 - (c) the application has not been decided.
- (2) The Magistrates Court may make another protection order even though the protection order was not properly applied for if—
 - (a) the person honestly applied for the first order; and
 - (b) had the application been properly made, the court could have made the other protection order.
- (3) This section does not apply to consent orders.

Note A consent order may be made whether or not any ground for making the order has been made out (see s 43 (2) (b)).

28 What if applications for the wrong order are decided?

- (1) This section applies if—
 - (a) a person applies for a protection order that is a domestic violence order or personal violence order (the *first order*); and
 - (b) the first order cannot be made because the conduct on which the application is based is not conduct that the first order can restrain; and
 - (c) the application is decided before it becomes apparent that section 27 applies; and
 - (d) a protection order (the *order made*) is purportedly made; and

- (e) the order made could have been validly made if applied for and made as a domestic violence order or a personal protection order of the kind made.

Example—when this section does not apply because of par (e)

A police officer applied for a domestic violence order made as an emergency order. The conduct relied on was, in fact, personal violence. This section does not apply because the order could not have been validly made as a personal protection order made as an emergency order.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(2) If this section applies—

- (a) the operation of the order made is not affected by the fact that the order could not be made on the application; and
- (b) the order made must be treated as if it were the kind of order that could be made in relation to the conduct mentioned in the application.

Example

A personal protection order is made as an interim order. Later, it is discovered that the parties had previously been domestic partners, making the conduct on which the application for the interim order was based domestic violence. The operation of the order is not affected by the fact that the wrong order was made, and the personal protection order made as an interim order is treated as if it is a domestic violence order made as an interim order.

(3) This section does not apply to consent orders.

Note A consent order may be made whether or not any ground for making the order has been made out (see s 43 (2) (b)).

Part 4 Interim orders

29 Grounds for making interim order

The Magistrates Court may make an interim order if satisfied that it is necessary to make the interim order to do 1 or more of the following until the application for the final order is decided:

- (a) ensure the safety of the aggrieved person or a child of the aggrieved person;
- (b) if the interim order is an interim workplace order—ensure the safety of the aggrieved person at the workplace, or an employee of the aggrieved person or other people at the workplace;
- (c) prevent substantial damage to the property of the aggrieved person or a child of the aggrieved person.

30 When can interim orders be made?

- (1) The Magistrates Court may make an interim order only on an application for a final order.

Note A final order includes an order amending a final order (see dict, def *final order*).

- (2) The Magistrates Court may make an interim order at any time during the proceeding on the application for the final order that it relates to.
- (3) Only 1 interim order may be made in relation to an application for a final order unless section 41 (May further interim orders be made?) applies.

31 What must a court consider?

- (1) In making an interim order, the Magistrates Court must consider whether contact between the aggrieved person or the respondent, and any child of either, is relevant to the making of the order, and to any relevant family contact order that the court is aware of.
- (2) A failure by the Magistrates Court to consider the matter mentioned in subsection (1) before making an interim order does not affect the validity of the order.

32 Interim orders and respondents with legal disability

- (1) This section applies if the Magistrates Court —
 - (a) is considering an application for an interim order; and
 - (b) considers that the respondent to the interim order is or may be a person with a legal disability.
- (2) The Magistrates Court must tell the public advocate—
 - (a) about the respondent, including the respondent’s contact details; and
 - (b) that the respondent may need a litigation guardian; and
 - (c) the return date for the application.

Note A respondent to a non-emergency protection order must have a litigation guardian (see s 19 (2)).

33 Service of applications for interim orders unnecessary

The Magistrates Court may make an interim order even if a copy of the application and a notice about the proceeding stating the date for the application’s return before the court have not been served on the respondent.

34 Return date for final orders on making of interim order

- (1) This section applies if—
 - (a) the Magistrates Court makes an interim order; and
 - (b) the return date for the application for the final order is less than 21 days after the day the interim order is made.
- (2) The Magistrates Court must change the return date for the application to a day that is at least 21 days after the day the interim order is made.

35 What interim orders may contain

- (1) An interim order may prohibit the respondent from being on premises where the aggrieved person lives or works.
- (2) However, the interim order may prohibit a respondent who is a child from being on premises where the child normally receives care (including education) or protection only if the Magistrates Court is satisfied that adequate arrangements have been made for the child's care (including education) and safety.

Example—when Magistrates Court may be satisfied adequate arrangements made for child

if a government agency responsible for the care and protection of children has found alternative accommodation for the child

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) The interim order (other than an interim workplace order) may do something mentioned in section 48 (2) (What final orders (other than workplace orders) may contain) (other than paragraph (a) or (b)) only if the Magistrates Court is satisfied that it is necessary to ensure the safety of the aggrieved person.

Note 1 Section 48 (2) (a) and (b) allows the Magistrates Court to make an order prohibiting the respondent from being on premises where the aggrieved person lives or works.

Note 2 Subsections (2) and (3) do not apply to consent orders (see s 43 (2) (b)).

- (4) If the interim order is an interim workplace order, the order may do something mentioned in section 54 (2) (What workplace orders may contain) (other than paragraph (a)) only if the Magistrates Court is satisfied that it is necessary to ensure the safety of an employee.

Note Section 54 (2) (a) allows the Magistrates Court to make an order prohibiting the respondent from entering the workplace.

- (5) An interim order may require the respondent to return to the aggrieved person personal items reasonably needed by the aggrieved person or a child of the aggrieved person.

Examples—personal items

- 1 personal clothing
- 2 toiletries
- 3 books
- 4 photographs
- 5 house or car keys

36 When interim orders become final orders

- (1) This section applies if the Magistrates Court makes an interim order in the absence of a respondent.

Note For service of an interim order, see s 64.

- (2) If the respondent does not wish to object to the interim order becoming a final order, the respondent may—
- (a) fill out the endorsement copy of the interim order in accordance with the instructions on the copy; and
 - (b) indicate on the endorsement copy that the respondent does not object to the interim order becoming a final order; and
 - (c) return it to the Magistrates Court before the return date for the application for the final order.
- (3) If the respondent acts under subsection (2), the interim order becomes a final order on the day the Magistrates Court receives the endorsement copy.
- (4) If the respondent wishes to object to the interim order becoming a final order, the respondent must—
- (a) fill out the endorsement copy of the interim order in accordance with the instructions on the copy; and
 - (b) indicate on the endorsement copy that the respondent objects to the interim order becoming a final order; and
 - (c) return it to the Magistrates Court at least 7 days before the return date for the application for the final order to which the interim order relates.
- (5) If the respondent acts under subsection (4), the Magistrates Court may decide the application.

- (6) If the respondent wishes to object to the interim order becoming a final order but does not act under subsection (4), the Magistrates Court may decide the application for the final order only if the respondent—
- (a) attends the Magistrates Court on the return date for the application for the final order; and
 - (b) objects to the interim order becoming a final order; and
 - (c) satisfies the court that the respondent—
 - (i) has a legal disability and did not have a litigation guardian appointed for the proceeding at any time before the endorsement copy was required to be returned under subsection (4) (c); or
 - (ii) has a reasonable excuse for failing to act under subsection (4).

Examples—par (c) (ii)

- 1 the respondent was injured in a car accident and unable to return the endorsement copy in the time required
- 2 the respondent is from a non-English speaking background and no one was able to interpret the endorsement copy for respondent until after it was required to be returned

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (7) If the interim order does not become a final order under subsection (3) and the application may not be decided by the Magistrates Court under subsection (5) or (6), the Magistrates Court may decide that the interim order becomes a final order at the end of the return date for the application for the final order.

Note See s 46 for the grounds for making final orders (other than workplace orders).

(8) In this section:

endorsement copy, of an interim order, means the copy of the interim order marked as the endorsement copy under section 64 (1).

respondent includes a representative of the respondent.

Note For review of final orders, see pt 11.

37 Length of interim orders not by consent

An interim order (other than a consent order) must not be in force for more than 2 years.

Note Section 45 provides for how long an interim order made as a consent order may be in force.

38 End of interim orders

An interim order ends before the end of the period stated in the order if any of the following happens:

- (a) the interim order is revoked;
- (b) the application on which the interim order was made is dismissed;
- (c) if a final order is made on the application and the respondent is present when the final order is made—the final order is made;
- (d) if a final order is made on the application but the respondent is not present when the final order is made—the final order is served on the respondent.

39 What if interim orders would expire before final orders are served?

- (1) This section applies if—
 - (a) a final order is made on an application; and
 - (b) the respondent is not present at the making of the final order; and
 - (c) an interim order made in relation to the same application would, but for this section, expire before the final order is served on the respondent.
- (2) The interim order is taken to continue in force until the final order is served on the respondent.
- (3) To remove any doubt, section 90 (which makes it an offence to contravene protection orders the respondent has notice of) applies to the interim order continued in force.

40 Firearms and interim orders

- (1) This section applies if an interim order is made in relation to a respondent who is the holder of a firearms licence.

Note 1 **Firearms licence**—see the dictionary.

Note 2 For the application of this section to consent orders, see s 43 (3).

- (2) The firearms licence is suspended by force of this section until the interim order ends.
- (3) However, the Magistrates Court may, on application when the interim order is made, order that the firearms licence not be suspended under this section if—
 - (a) the interim order is a personal protection order; and
 - (b) the court is satisfied that the licence should not be suspended.

- (4) The Magistrates Court may make a consent order that the firearms licence not be suspended under this section only if the interim order is a personal protection order.
- (5) The Magistrates Court may order—
 - (a) the seizure of the firearms licence for the period stated in the interim order; and
 - (b) the seizure and detention for that period of any firearm or ammunition in the respondent's possession.

41 May further interim orders be made?

- (1) This section applies in relation to an application for a final order if—
 - (a) an interim order has been made in relation to the final order; and
 - (b) the interim order has ended or is about to end.
- (2) The Magistrates Court may make a further interim order if it is satisfied that there are special or exceptional circumstances (having regard to the principles for making protection orders) that justify the making of a further interim order.

Note The principles for making protection orders are set out in s 7.

- (3) However, a further interim order must not be made as a consent order.

Note An interim order may be amended in certain circumstances (see s 58).

42 When may the registrar extend interim orders?

- (1) This section applies if the registrar adjourns a proceeding because the respondent has not been served with a copy of the application and a notice about the proceeding stating the date for the application's return before the Magistrates Court.
- (2) The registrar may also amend any interim order made in relation to the application by extending it to take into account the delay caused by the adjournment.
- (3) The registrar must not extend an interim order under subsection (2) for longer than 8 weeks.

Note An interim order must not be extended if the extension would mean the interim order would be in force for more than 16 weeks (see s 61 (2)).

Part 5 Consent orders

43 Consent orders

- (1) On application for a protection order, the Magistrates Court may make a protection order with the consent of the parties to the proceeding.
- (2) The order may be made—
 - (a) whether or not the parties have attended, or any party has attended, before the Magistrates Court; and
 - (b) whether or not any ground for making the order has been made out; and
 - (c) without proof or admission of guilt.

Note Sections 84 and 85 apply to require the Magistrates Court to explain the order intended to be made under this section in certain circumstances. Section 84 deals with explaining orders if the respondent is before the court and s 85 deals with explaining orders if the aggrieved person is before the court.

- (3) If an automatic consequence flows from the making of a kind of order and an order of that kind is made under this section, the automatic consequence flows from the making of the order unless—
 - (a) this Act allows a discretion for the automatic consequence not to flow from the making of an order of that kind; and

- (b) the parties consent to the automatic consequence not flowing from the making of the order.

Example

The parties to an application agree to the making of a final order. An automatic consequence of the order is that any firearms licence of the respondent is cancelled under s 57 (Firearms and final orders). That consequence automatically flows from the making of the final order. However, under s 57 (3) the Magistrates Court may, in certain circumstances (but not if the final order is a domestic violence order), order that the licence not be cancelled. If those circumstances apply and the parties agree that the firearms licence not be cancelled, the firearms licence would not be cancelled under s 57.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (4) However, this section does not allow the Magistrates Court to make a protection order—
 - (a) that may not otherwise be made under this Act; or
 - (b) for a period other than a period that the order may be made for (unless section 45 (Length of interim orders by consent) applies); or

Note Section 55 (3) limits the length of final orders made as consent orders.

- (c) if section 44 applies.

44 Consent orders and parties with legal disability

- (1) This section applies if—
 - (a) the Magistrates Court is considering an application for a consent order; and
 - (b) a party to the proceeding is a person with a legal disability who is not separately represented by someone else; and
 - (c) it appears to the court that the party should be separately represented by someone else.

- (2) The Magistrates Court—
 - (a) must not make the consent order; and
 - (b) may adjourn the hearing to allow the person to get a litigation guardian.

45 Length of interim orders by consent

- (1) An interim order made as a consent order remains in force for the period of up to 16 weeks stated in the order.
- (2) To remove any doubt, section 61 (2) applies to an interim order made by consent.

Note Under s 61 (2), an interim order made by consent may not be amended by extending it to be in force for longer than 16 weeks.

Part 6 Final orders

Division 6.1 Final orders other than workplace orders

46 Grounds for making final orders (other than workplace orders)

- (1) The Magistrates Court may, on application, make a final order (other than a workplace order) if satisfied that—
 - (a) the respondent has engaged in domestic violence; or
 - (b) the respondent—
 - (i) has engaged in personal violence towards the aggrieved person; and
 - (ii) may engage in personal violence towards the aggrieved person during the time the order is proposed to operate if the order is not made.
- (2) If an interim order has been made on the application and the respondent has objected to the interim order, in making the final order the Magistrates Court must consider the respondent's objection.

Note This section does not apply to consent orders (see s 43 (2) (b)).

47 What must a court consider before making final orders other than workplace orders?

- (1) In deciding an application for a final order, the Magistrates Court must consider the following:
 - (a) the objects of this Act (set out in section 6) and the principles for making protection orders (set out in section 7);

- (b) the welfare of each child (if any) affected, or likely to be affected, by the respondent's conduct;
- (c) the accommodation needs of the aggrieved person, each child (if any) of the aggrieved person, and each child (if any) of the respondent;
- (d) any hardship that may be caused to the respondent or anyone else by the making of a protection order;
- (e) if the court proposes to include in the protection order a prohibition or requirement mentioned in section 48 (3)—the income, assets and liabilities of the respondent and the aggrieved person (other than an aggrieved person who is a child);

Note A prohibition under s 48 (3) (a) prohibits the respondent from taking possession of personal property reasonably needed by the aggrieved person or a child of the aggrieved person. A requirement under s 48 (3) (b) requires the respondent to give the aggrieved person personal property reasonably needed by the aggrieved person or a child of the aggrieved person.

- (f) whether contact between the aggrieved person or the respondent, and any child of either of them, is relevant to the making of the protection order, and to any relevant family contact order of which the court is aware;
- (g) if the respondent has previously engaged in conduct that is domestic violence, personal violence or personal violence in relation to a workplace—that conduct;
- (h) if a protection order has previously been made in relation to the respondent—the protection order;
- (i) if the respondent has previously contravened a protection order—the contravention;
- (j) the need to ensure that property is protected from damage.

Note This section does not apply to consent orders (see s 43 (2) (b)).

- (2) The Magistrates Court may also consider anything else that is relevant.
- (3) A failure by the Magistrates Court to consider the matter mentioned in subsection (1) (f) before making an order does not affect the validity of the order.
- (4) In subsection (1) (h) and (i):
protection order includes the following orders:
 - (a) an order under a law of a State, another Territory or New Zealand that has the same effect or substantially the same effect as a protection order;
 - (b) a protection order made under the *Domestic Violence Agencies Act 1986* as in force at any time;
 - (c) a protection order made under the *Domestic Violence and Protection Orders Act 2001* as in force at any time;
 - (d) a restraining order made under the *Magistrates Court Act 1930* before 27 March 2002.

48 What final orders (other than workplace orders) may contain

- (1) A final order (other than a workplace order) may contain the conditions or prohibitions the Magistrates Court considers necessary or desirable.
Note This Act (including this section) is subject to the objects set out in s 6 and the principles for making protection orders set out in s 7.
- (2) Without limiting subsection (1), the order may do 1 or more of the following:
 - (a) prohibit the respondent from being on premises where the aggrieved person lives;
 - (b) prohibit the respondent from being on premises where the aggrieved person works;

- (c) prohibit the respondent from being on premises where the aggrieved person is likely to be;
 - (d) prohibit the respondent from being in a particular place;
 - (e) prohibit the respondent from being within a particular distance from the aggrieved person;
 - (f) prohibit the respondent from contacting, harassing, threatening or intimidating the aggrieved person;
 - (g) prohibit the respondent from damaging the aggrieved person's property;
 - (h) prohibit the respondent from doing anything mentioned in paragraphs (a) to (g) in relation to—
 - (i) a child of the aggrieved person; or
 - (ii) any other child if the Magistrates Court is satisfied that there is an unacceptable risk of the child being exposed to domestic violence;
 - (i) prohibit the respondent from causing someone else to do something mentioned in paragraph (f) or (g) or subsection (3) (a);
 - (j) state the conditions on which the respondent may—
 - (i) be on particular premises; or
 - (ii) be in a particular place; or
 - (iii) approach or contact a particular person.
- (3) Also, an order that includes a prohibition mentioned in subsection (2) (a) may—
- (a) prohibit the respondent from taking possession of particular personal property that is reasonably needed by the aggrieved person or a child of the aggrieved person; or

- (b) require the respondent to give the aggrieved person particular personal property that is in the respondent's possession and is reasonably needed by the aggrieved person or a child of the aggrieved person.
- (4) A final order made as a consent order may contain a condition or prohibition that a final order made other than as a consent order may contain, but it is not necessary for the Magistrates Court to consider whether the condition or prohibition is necessary or desirable.

Division 6.2 Workplace orders

49 Definitions—div 6.2

In this division:

aggrieved person, for a workplace order—

- (a) means the employer of the person against whom the conduct is directed; and
- (b) if the workplace is a child facility, includes—
 - (i) a person in control of the child facility; and
 - (ii) an employee of an employer mentioned in paragraph (a).

child facility means—

- (a) a preschool, childcare centre, school, or other similar facility the main purpose of which is the care or education of children; or
- (b) a paediatric ward, or other facility in a hospital the main purpose of which is to provide health services for children; or
- (c) a place of care or a therapeutic protection place under the *Children and Young People Act 2008*; or

- (d) an office or other facility used by or for the Territory for children or young people who are, under the *Children and Young People Act 2008*, care and protection chapters, in need of care and protection or in therapeutic protection.

Note The *Children and Young People Act 2008*, s 344 defines a child or young person in need of care and protection.

50 What is *personal violence* for a workplace?

For this division, a person's conduct is *personal violence* in relation to a workplace if the person—

- (a) causes personal injury, or threatens to cause personal injury, to an employee in the employee's capacity as an employee at the workplace; or
- (b) causes damage to property, or threatens to cause damage to property, in the workplace in a way that causes reasonable fear in an employee; or
- (c) is harassing or offensive to an employee in the employee's capacity as an employee at the workplace.

51 Effect of availability of workplace orders

The availability of workplace orders under this Act does not create a new right or obligation in relation to employment relationships.

52 Grounds for making workplace orders

- (1) The Magistrates Court may, on application, make a workplace order in relation to a workplace if satisfied that the respondent—
 - (a) has engaged in personal violence in relation to the workplace; and

- (b) may engage in personal violence in relation to the workplace during the time the order is proposed to operate if the order is not made.

Note 1 An aggrieved person may apply for a workplace order (see s 18).

Note 2 An aggrieved person, for a workplace order, is the employer, not the person who has suffered the violence (see dict, def *aggrieved person*).

- (2) The Magistrates Court may make a workplace order in relation to a workplace that is a child facility if satisfied that the respondent poses a risk to people at the workplace, for example, children, carers or teachers.

Note 1 This section does not apply to consent orders (see s 43 (2) (b)).

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

53 What must a court consider before making workplace orders?

- (1) In deciding an application for a workplace order, the Magistrates Court must consider the following:
 - (a) the objects of this Act (set out in section 6) and the principles for making protection orders (set out in section 7);
 - (b) any hardship that may be caused to the respondent or anyone else because of the making of a workplace order;
 - (c) if the respondent has previously engaged in conduct that is domestic violence, personal violence or personal violence in relation to a workplace—that conduct;
 - (d) if a protection order has previously been made in relation to the respondent—the protection order;
 - (e) if the respondent has previously contravened a protection order—the contravention;

- (f) the need to ensure that property in the workplace is protected from damage.

Note This section does not apply to consent orders (see s 43 (2) (b)).

- (2) The Magistrates Court may also consider anything else that is relevant.
- (3) In subsection (1) (d) and (e):

protection order includes the following orders:

- (a) an order under a law of a State, another Territory or New Zealand that has the same effect or substantially the same effect as a protection order;
- (b) a protection order made under the *Domestic Violence Agencies Act 1986* as in force at any time;
- (c) a protection order made under the *Domestic Violence and Protection Orders Act 2001* as in force at any time;
- (d) a restraining order made under the *Magistrates Court Act 1930* before 27 March 2002.

54 What workplace orders may contain

- (1) A workplace order may contain the conditions or prohibitions the Magistrates Court considers necessary or desirable.

Note This Act (including this section) is subject to the objects set out in s 6 and the principles for making protection orders set out in s 7.

- (2) Without limiting subsection (1), the order may do 1 or more of the following:
- (a) prohibit the respondent from entering the workplace;
- (b) prohibit the respondent from being within a particular distance from the workplace;
- (c) prohibit the respondent from contacting, harassing, threatening or intimidating an employee at the workplace;

- (d) prohibit the respondent from damaging property in the workplace;
 - (e) prohibit the respondent from causing someone else to do something mentioned in paragraph (c) or (d);
 - (f) state the conditions on which the respondent may enter or approach the workplace, or approach or contact an employee.
- (3) A workplace order made as a consent order may contain a condition or prohibition mentioned in subsection (2), but it is not necessary for the Magistrates Court to consider whether the condition or prohibition is necessary or desirable.

Division 6.3 Length of final orders etc

Note 1 An interim order may be made on application for a final order (see s 30).

Note 2 See s 46 for the grounds for making final orders (other than workplace orders) and s 52 for the grounds for making workplace orders.

55 Length of final domestic violence orders

- (1) A final order that is a domestic violence order remains in force for—
- (a) 2 years; or
 - (b) if a shorter period is stated in the protection order—the period stated.
- (2) However, the Magistrates Court may make a domestic violence order that remains in force for longer than 2 years if satisfied that there are special or exceptional circumstances that justify the longer period.
- (3) A final order that is a domestic violence order must not be longer than 2 years if made as a consent order.

56 Length of final personal protection orders

A final order that is a personal protection order remains in force for—

- (a) 1 year; or
- (b) if a shorter period is stated in the protection order—the period stated.

57 Firearms and final orders

- (1) This section applies if a final order is made in relation to a respondent who is the holder of a firearms licence.

Note 1 **Firearms licence**—see the dictionary.

Note 2 For the application of this section to consent orders, see s 43 (3).

- (2) The firearms licence is cancelled by force of this section.
- (3) However, the Magistrates Court may, on application when the final order is made, order that the firearms licence not be cancelled under this section if—
 - (a) the final order is a personal protection order; and
 - (b) the court is satisfied that the firearms licence should not be cancelled.
- (4) The Magistrates Court may make a consent order that the firearms licence not be cancelled under this section only if the final order is a personal protection order.
- (5) The Magistrates Court may order—
 - (a) the seizure of the firearms licence; and
 - (b) the seizure of any firearm or ammunition in the respondent's possession.

Part 7 Amendment of orders

58 Amendment generally

- (1) The Magistrates Court may, on application, amend a protection order if satisfied that—
 - (a) the order as amended could be made on application for a protection order; and
 - (b) if the amendment would reduce the protection of a child who is 15 years old or younger—the child is no longer in need of the greater protection provided by the unamended protection order.
- (2) If the protection order has been amended by being extended, the order must mention that it has been extended.
- (3) This section does not apply in relation to a kind of amendment if this Act (apart from this section) expressly deals with the grounds for that kind of amendment or for revocation.

Note 1 The following sections expressly deal with the grounds for amendment:

- s 61 (Extension of interim orders by consent)
- s 62 (Extension of final orders)
- s 78 (Emergency amendment and revocation of emergency orders)
- s 79 (Non-emergency amendment and revocation of emergency orders).

Note 2 Pt 11 deals with review of orders.

59 Amendment of interim orders

- (1) The Magistrates Court may, on application by any of the following people, amend an interim order:
- (a) the aggrieved person for the order;
 - (b) the respondent for the order;
 - (c) a police officer.

Note If a form is approved under the *Court Procedures Act 2004* for an application under this section, the form must be used.

- (2) However, the Magistrates Court may amend the interim order only if satisfied that—
- (a) either—
 - (i) there has been a change in the circumstances of a party to the order; or
 - (ii) the order causes unnecessary hardship to the respondent; and
 - (b) amending the order will not adversely affect the safety of the aggrieved person or a child of the aggrieved person.

Example

The interim order, when first made, did not exclude the respondent from the family home. Several days after the interim order is made, the respondent behaves in a way that increases the risk of harm to the aggrieved person. The aggrieved person now needs an amendment of the interim order to exclude the respondent from the family home.

Note 1 For service of an amended interim order, see s 64.

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

60 Temporary amendment of final orders

- (1) The Magistrates Court may, on application by an aggrieved person or respondent, amend (a *temporary amendment*) a final order (the *original order*) for a stated period.

Note If a form is approved under the *Court Procedures Act 2004* for an application under this section, the form must be used.

- (2) An application for a temporary amendment must state the grounds for the application.

Examples

- 1 the applicant has had a significant change in circumstances since the original order was made
- 2 the original order restricts the respondent's rights unnecessarily

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) An application for a temporary amendment must be made before the original order ends.
- (4) However, the Magistrates Court may amend the original order for a stated period only if satisfied that—
- (a) the amendment is necessary because of a matter of significant importance affecting 1 or more parties; and
 - (b) the parties have taken reasonable steps to deal with the matter without amending the order; and
 - (c) amending the order for a stated period is the only reasonable way to deal with the matter; and
 - (d) amending the order will not adversely affect the safety of the aggrieved person or a child of the aggrieved person; and
 - (e) it is proper, in all the circumstances, to amend the order for the stated period.

- (5) The order amending the original order must state—
 - (a) the time and date when the amendment starts and ends; and
 - (b) the reasons for the amendment.

61 Extension of interim orders by consent

- (1) The Magistrates Court may, on application, amend an interim order that is a consent order by extending it for an additional period, or further additional period, of up to 8 weeks.
- (2) However, an interim order must not be extended if the extension would mean the interim order would be in force for more than 16 weeks.

Note The registrar may extend an interim order if the application for the final order has not been served on the respondent (see s 42) or if the registrar is exercising the Magistrates Court's jurisdiction to make a consent order.

62 Extension of final orders

- (1) The Magistrates Court may, on application, amend a final order (the *original order*) by extending it.
- (2) An application to extend the original order must be made at least 21 days before the day the original order is to end.
- (3) However, the Magistrates Court may allow someone to apply for an extension less than 21 days before the end of the original order.
- (4) If the original order is a domestic violence order, the Magistrates Court must, on application, amend the original order by extending it for a stated period unless satisfied that a protection order is no longer necessary to protect the aggrieved person from domestic violence by the respondent.

- (5) If the original order is a personal protection order, the Magistrates Court may amend the original order by extending it only if satisfied that a protection order is still necessary to protect the aggrieved person from personal violence by the respondent.
- (6) Subsections (3) and (4) do not apply if the order amending the original order by extending it is a consent order.
- (7) The parties may consent to an application being made out of time under this section.

Note An interim order may be applied for on an application for extension of a final order.

Part 8 Service of non-emergency protection orders

63 Service of applications

- (1) The registrar must—
 - (a) serve on an applicant a notice about the proceeding stating the date for the application's return before the Magistrates Court; and
 - (b) serve a copy of the application and the notice on the relevant people.

Note If a form is approved under the *Court Procedures Act 2004* for a return date notice, the form must be used.

- (2) If the return date set under section 22 is not the day the application is received, the registrar must act under subsection (1) as soon as is practicable.
- (3) If the return date set under section 22 is the day the application is received, the registrar must act under subsection (1) after the application has gone before the Magistrates Court and the court has set a further date for the application's return before the court.
- (4) Service on the applicant or respondent under subsection (1) must be personal service unless the Magistrates Court makes an order under section 66 (If service impracticable or impossible).

- (5) For this section, the *relevant people* are—
- (a) the respondent; and
 - (b) anyone else the registrar is satisfied has a relevant interest in the proceeding who does not already have a copy.

Example—person with a relevant interest in the proceeding

a parent or guardian of a child who is an aggrieved person if the parent or guardian does not live with the child

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

64 Service of non-emergency protection orders

- (1) If the Magistrates Court makes a non-emergency protection order, the registrar must—
 - (a) if the order is an interim order—serve 2 copies of the order (1 marked as the endorsement copy) on the respondent not later than 14 days before the return date for the application for the final order; and
 - (b) if the order is not an interim order—serve a copy of the order on the respondent; and
 - (c) give a copy of the order to—
 - (i) each other party to the proceeding; and
 - (ii) the chief police officer; and
 - (iii) the registrar of firearms.
- (2) Service under subsection (1) (a) must be personal service unless—
 - (a) the respondent is present when the protection order is made; or
 - (b) the Magistrates Court makes an order under section 66 (If service impracticable or impossible).

65 If personal service not required

- (1) This section applies if a document required to be served under this Act is not required to be served personally.
- (2) The document may be served—
 - (a) by delivering it to the person personally; or
 - (b) by leaving it—
 - (i) at the home or work address of the person last-known to the person serving the document; and
 - (ii) with a person apparently living or employed at the place who appears to be more than 16 years old; or
 - (c) if the person has an address for service—by leaving it at, or sending it by prepaid post to, the address for service.
- (3) The Legislation Act, part 19.5 (Service of documents) does not apply to the service of a document that is required to be served under this Act.

66 If service impracticable or impossible

- (1) This section applies if—
 - (a) personal service of an application under this Act is not reasonably practicable; or
 - (b) a document that is not required to be personally served cannot be served under section 65.
- (2) The Magistrates Court may order that the application or document be served in the way, stated in the order, that the court considers is likely to bring the application or document to the attention of the person required to be served.

67 Service of documents by police

- (1) The Magistrates Court may direct that a document required to be served on someone be served by a police officer if the court considers that it is appropriate to do so.
- (2) If the Magistrates Court gives a direction under subsection (1), an authorised police officer must, when asked to do so by the registrar, arrange for the document to be served by a police officer.
- (3) For this section:
authorised police officer means the police officer in charge of a police station.

Part 9 Emergency orders

Note An emergency order is a kind of domestic violence order (see s 10).

68 **Who may apply for emergency order?**

Only a police officer may apply for an emergency order.

69 **When may emergency order be made?**

A judicial officer may make an emergency order on application if—

- (a) the judicial officer is satisfied that—
 - (i) the respondent has behaved in a way that satisfies the judicial officer that there are reasonable grounds for believing that, if an emergency order is not made, the respondent may cause physical injury to, or substantial damage to the property of, the aggrieved person or a child of the aggrieved person; and
 - (ii) the aggrieved person is a relevant person in relation to the respondent; and
 - (iii) it is not practicable to arrest the respondent, or there is no ground to arrest the respondent; and
- (b) it is outside the sitting hours of the Magistrates Court.

70 **How can application for emergency order be made?**

- (1) The police officer may apply to a judicial officer by telephone for an emergency order.
- (2) The police officer must—
 - (a) satisfy the judicial officer about the police officer's identity, rank and identification number; and
 - (b) describe the conduct the application is based on; and

- (c) give the reasons for the application; and
 - (d) tell the judicial officer about any relevant family contact order, or any pending application for such an order, that the police officer is aware of; and
 - (e) provide any other relevant information required by the judicial officer.
- (3) If it is practicable in the circumstances, the police officer must send the judicial officer a brief written statement of the matters mentioned in subsection (2) (b) and (c) by fax or email.
- (4) If the statement mentioned in subsection (3) is not sent by fax or email, the judicial officer must ensure that a brief description of the conduct the application is based on and the reasons for the application are part of the record of the Magistrates Court.

71 What should judicial officers consider in making emergency order?

- (1) In making an emergency order, a judicial officer must consider whether contact between the aggrieved person or the respondent, and any child of either, is relevant to the making of the order, and to any relevant family contact order that the judicial officer is aware of.
- (2) A failure to consider the matters mentioned in subsection (1) before making an emergency order does not affect the validity of the order.

Note The *Family Law Act 1975* (Cwlth), pt VII, divs 1 and 11 deal with the relationship between domestic violence orders and orders or injunctions mentioned in that Act, s 68P (1) (a). In particular, s 60CF imposes an obligation on certain people to inform the court of any family violence orders (including domestic violence orders) and under s 68Q certain people may apply for a declaration of the extent to which an order or injunction mentioned in s 68P (1) (a) is inconsistent with a family violence order.

72 Emergency orders

- (1) An emergency order must include—
 - (a) the name, rank and identification number of the police officer who applied for the order; and
 - (b) the name of the person to be protected by the order; and
 - (c) the terms of the order; and
 - (d) the time the order is made; and
 - (e) the name and position of the judicial officer.
- (2) The emergency order must—
 - (a) be sent to the police officer by fax or email if it is practicable to do so; or
 - (b) otherwise be dictated to the police officer over the telephone.
- (3) A paper produced by fax or email, or written under the dictation mentioned in subsection (2), is taken to be a copy of the emergency order.
- (4) A record made by a judicial officer of an emergency order dictated to a police officer over the telephone is the original emergency order.

73 Action on refusing emergency order

If an application for an emergency order is refused, the judicial officer must record in writing—

- (a) the name, rank and identification number of the police officer who applied for the order; and
- (b) the name of the person for whose protection the order was sought; and
- (c) the reasons for refusing to make the order.

74 Records of proceedings

The judicial officer must ensure that the record of the proceeding, including the order made (if any), is part of the record of the Magistrates Court.

Note The record of the proceeding consists of the documents relevant to the proceeding, including any fax or email received from the police officer, the written record under s 70 (4) and s 73 and any other relevant documents.

75 Detention of people against whom emergency orders sought

- (1) If it is proposed to apply for an emergency order against a person, a police officer may—
 - (a) if appropriate, remove the person to another place; and
 - (b) detain the person until the application for the order has been dealt with and a copy of any order made is given to the person.
- (2) A person must not be detained under this section for longer than 4 hours.

76 What emergency order may contain

- (1) An emergency order may prohibit the respondent from being on premises where the aggrieved person lives.
- (2) An emergency order may do something mentioned in section 48 (2) (What final orders (other than workplace orders) may contain) (other than paragraph (a)) only if the judicial officer making the order is satisfied that it is necessary to ensure the safety of the aggrieved person.

Note Section 48 (2) (a) allows the Magistrates Court to make an order prohibiting the respondent from being on premises where the aggrieved person lives.

- (3) An emergency order may prohibit a respondent who is a child from being on premises where the child normally lives only if the judicial officer is satisfied that adequate arrangements have been made for the child's care and safety.

Example—when judicial officer may be satisfied adequate arrangements made for child

if a government agency responsible for the care and protection of children has found alternative accommodation for the child

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

77 Length of emergency orders

- (1) An emergency order remains in force until the earliest of the following:
- (a) close of business on the second day after the day when the order is made;
 - (b) the order is revoked;
 - (c) a final order or interim order made against the respondent in relation to the aggrieved person is served on the respondent.

Note Periods of less than 5 days are to be worked out ignoring any day when the Magistrates Court is not open for business (see s 115).

- (2) An emergency order cannot be renewed or extended.

78 Emergency amendment and revocation of emergency orders

- (1) An emergency order may be revoked or amended outside the sitting hours of the Magistrates Court by a judicial officer on application by a police officer.

- (2) The procedure for amending or revoking an emergency order outside sitting hours is the same as the procedure for making an emergency order.

Note The procedure for making an emergency order is set out at the beginning of this part.

- (3) However, the application for amendment or revocation need not describe the conduct the application is based on.

79 Non-emergency amendment and revocation of emergency orders

An emergency order may be amended or revoked during sitting hours of the Magistrates Court in the same way, and on the same grounds, as an interim order may be amended or revoked.

Note For the way an interim order may be amended or revoked, see s 58, s 59 and pt 11.

80 Firearms and emergency orders

- (1) If an emergency order is made in relation to a respondent who is the holder of a firearms licence, the firearms licence is, by force of this section, suspended until the order ends or is revoked.

Note **Firearms licence**—see the dictionary.

- (2) The judicial officer who makes the emergency order may also order—
- (a) the seizure of the firearms licence for the period that the order is in force; and
 - (b) the seizure and detention for that period of any firearm and any ammunition for a firearm in the respondent's possession.

81 Service of emergency orders

- (1) A copy of an emergency order must be served on the respondent by a police officer.
- (2) Service under subsection (1) must be personal service unless the Magistrates Court makes an order under section 66 (If service impracticable or impossible).

82 Police required to explain emergency order served

- (1) A police officer serving a copy of an emergency order on a respondent must, as far as is practicable in the circumstances, explain to the respondent the purpose, terms and effect of the order and the consequences of contravening the order.
- (2) The failure of a police officer to comply with subsection (1) does not affect the validity of the service of the emergency order.

83 Recording reasons if emergency order not applied for

- (1) This section applies if a police officer—
 - (a) deals with an incident in which—
 - (i) someone (the *respondent*) has behaved in a way that satisfies the police officer that there are reasonable grounds for believing that the respondent may cause physical injury to the aggrieved person if an emergency order is not made; and
 - (ii) the aggrieved person is a relevant person for the respondent; and
 - (iii) it is not practicable to arrest the respondent, or there is no ground to arrest the respondent; and
 - (b) decides not to apply for an emergency order.
- (2) The police officer must make a record of the decision, including a brief note of the reasons for it.

Part 10 Other provisions about protection orders

84 Explaining orders if respondent present

- (1) This section applies if—
 - (a) the Magistrates Court intends to make a non-emergency protection order; and
 - (b) the respondent is before the court.
- (2) On making the protection order (other than a consent order), the Magistrates Court must explain to the respondent, in language likely to be readily understood by the respondent—

- (a) the purpose, terms and effect of the order; and

Note Explaining the effect of the order includes explaining, if relevant, that any firearms licence of the respondent will automatically be cancelled or suspended under this Act.

- (b) the consequences that may follow if the respondent fails to comply with the order; and
- (c) how the order may be amended or revoked; and
- (d) that, if a State, another Territory or New Zealand has legislation that corresponds to this Act, the order may be registered, and enforced, in the State, Territory or New Zealand without notice of registration being given to the respondent.

Note Pt 12 deals with the registration of protection orders from other jurisdictions in the ACT.

- (3) Before making a consent order, the Magistrates Court must explain to the respondent, in language likely to be readily understood by the respondent, the matters mentioned in subsection (2) (a) to (d).

- (4) A failure of the Magistrates Court to comply with this section in relation to a protection order does not affect the validity of the order.

85 Explaining orders if aggrieved person present

- (1) This section applies if—
- (a) the Magistrates Court intends to make a non-emergency protection order; and
 - (b) the aggrieved person is before the court.
- (2) On making the protection order (other than a consent order), the Magistrates Court must explain to the aggrieved person, in language likely to be readily understood by the person—
- (a) the purpose, terms and effect of the order; and

Note Explaining the effect of the order includes explaining, if relevant, that any firearms licence of the respondent will automatically be cancelled or suspended under this Act.

- (b) the consequences that may follow if the respondent fails to comply with the order; and
 - (c) how the order may be amended or revoked; and
 - (d) that, if the aggrieved person aids or abets the respondent to commit an offence against section 90 (Offence for contravention of protection order), the aggrieved person may also commit an offence; and
 - (e) that the order may be registered and enforced in a State, another Territory or New Zealand.
- Note* The Criminal Code, pt 2.4 deals with offences of aiding and abetting.
- (3) Before making a consent order, the Magistrates Court must explain to the aggrieved person, in language likely to be readily understood by the person, the matters mentioned in subsection (2) (a) to (e).

- (4) The failure of the Magistrates Court to comply with this section in relation to a protection order does not affect the validity of the order.

86 Reasons for order

- (1) If the Magistrates Court makes a non-emergency protection order, the court must record the reasons for making the order.
- (2) If the order is a consent order, the reason for making the order is that the parties have consented to it.

87 Orders generally not to include aggrieved person's address

- (1) The aggrieved person's home or work address must not be included in a protection order.
- (2) However, the person's home or work address may be included in a protection order if—
- (a) the aggrieved person agrees to the address being included; or
 - (b) it is necessary to include the address to allow the respondent to comply with the order; or
 - (c) the Magistrates Court, registrar or another judicial officer making the order is satisfied that the respondent already knows the address.

88 Prohibitions or conditions may be shorter

A prohibition or condition in a protection order may have effect for a period stated in the protection order that is shorter than the period of the protection order.

89 Recommendations for counselling etc

The Magistrates Court may recommend that the respondent, the aggrieved person or another relevant person take part in a program of counselling, training, mediation, rehabilitation or assessment.

90 Offence for contravention of protection order

- (1) This section applies to a person who is subject to a protection order if the person—
 - (a) was present when the protection order was made; or
 - (b) has been personally served with a copy of the protection order.
- (2) The person commits an offence if the person engages in conduct that contravenes the protection order (including a condition of the order).

Maximum penalty: 500 penalty units, imprisonment for 5 years or both.

Note In deciding the sentence to be imposed on a person under this section, the Magistrates Court must consider the matters under the *Crimes (Sentencing) Act 2005*, s 33 (Sentencing—relevant considerations).

- (3) This section applies to conduct engaged in outside the ACT as well as conduct engaged in within the ACT.

Part 11 Review of orders

91 Application for review of particular final orders

- (1) This section applies to an application for review of a final order (the *original order*), other than—
 - (a) an application by a respondent for review of an order that became final under section 36; and
 - (b) an application by a party for review of a consent order.

Note 1 Section 93 applies to applications for review of final orders that became final under s 36.

Note 2 Section 95 applies to applications for review of consent orders.

- (2) A party to the original order or someone else with sufficient interest in the original order may apply for review of the original order.

Example—someone with sufficient interest

The Magistrates Court may decide, in a particular case, that the guardian of someone for whom a protection order has been made has sufficient interest to apply for review of the order.

Note 1 If a form is approved under the *Court Procedures Act 2004* for an application under this section, the form must be used.

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) However, a respondent or someone else with sufficient interest in the original order must apply to the Magistrates Court for leave to make an application to review the order.

- (4) Before hearing the application for leave, the Magistrates Court must fix a time to hear the application, and give the following people written notice of the time:
- (a) the aggrieved person;
 - (b) the respondent;
 - (c) if someone else with an interest in the original order made the application for leave—that person.
- (5) In this section:

aggrieved person means the aggrieved person in relation to the original order, and includes a representative of the aggrieved person.

respondent means the respondent to the original order, and includes a representative of the respondent.

92 Review of particular final orders

- (1) On hearing an application under section 91 to review a final order, the Magistrates Court must, by order—
- (a) dismiss the application; or
 - (b) confirm the original order; or
 - (c) revoke the original order; or
 - (d) set aside the original order and make a new order.

Note See s 46 for the grounds for making final orders (other than workplace orders) and s 52 for the grounds for making workplace orders.

- (2) The Magistrates Court may revoke the original order—
- (a) if the Magistrates Court is satisfied that the original order is no longer necessary for the protection of the person it protects; or
 - (b) if—
 - (i) the applicant for the original order applies for the review of the original order; and
 - (ii) if the revocation would affect the protection of a child who is 15 years old or younger—the Magistrates Court is satisfied the child is no longer in need of the protection provided by the original order.

93 Application by respondent for review of order finalised under s 36

- (1) This section applies if an interim order has become a final order (the *original order*) under section 36.
- (2) The respondent to the original order may apply to the Magistrates Court for a review of the original order.

Note If a form is approved under the *Court Procedures Act 2004* for an application under this section, the form must be used.

- (3) The Magistrates Court may hear an application under subsection (2) only if satisfied that—
- (a) for a respondent who did not act under section 36—the respondent has a reasonable excuse for failing to act; or
 - (b) the respondent is a person with a legal disability who did not have a litigation guardian when the interim order became a final order and did not attend court on the return date for the application for the final order; or
 - (c) the respondent has had a significant change in circumstances relevant to the making of the original order.

94 Review of order finalised under s 36

- (1) On hearing an application for review under section 93, the Magistrates Court must, by order—
 - (a) dismiss the application; or
 - (b) confirm the original order; or
 - (c) set aside the original order and—
 - (i) make a new interim order; and
 - (ii) set a new return date for the application for the interim order to become final.

Note See s 29 for the grounds for making interim orders.

- (2) If the Magistrates Court makes a new interim order, section 36 applies to the order.

95 Review of consent orders

- (1) A party to a proceeding may apply to the Magistrates Court for a review of a consent order (the *original order*) only on the ground that the making of the original order was induced or affected by fraud or duress, other than fraud of the party or duress applied by the party.
- (2) On application for the review, the Magistrates Court may—
 - (a) amend the original order or declare the original order void; or
 - (b) refuse to amend the original order or declare the original order void; or
 - (c) make any order that could have been made on the application in relation to which the original order was made instead of the original order.

96 Appealable decisions

The following decisions under this Act are appealable:

- (a) the making, amending or revoking of a protection order, other than an interim order or emergency order, by the Magistrates Court;
- (b) the refusal of the court to make, amend or revoke a protection order, other than an interim order or an emergency order;
- (c) a decision mentioned in section 95 made on the review of a consent order.

97 When can someone appeal to Supreme Court?

- (1) A person may appeal to the Supreme Court against an appealable decision if the person was a party to the proceeding in which the decision was made.
- (2) The person must file a notice of appeal (the *notice of appeal*) with the Supreme Court not later than 21 days after—
 - (a) if the appealable decision was the making or amending of a protection order and the respondent was not present when the protection order was made or amended—the day the protection order or amendment is served on the respondent; or
 - (b) in any other case—the date of the order.
- (3) However, the Supreme Court may allow a person to file a notice of appeal after the period mentioned in subsection (2) if satisfied that it is appropriate to do so.

98 Giving notice of appeal

As soon as practicable after filing the notice of appeal, the appellant must—

- (a) file a copy of the notice in the office of the Magistrates Court; and
- (b) serve a copy of the notice on each other party to the proceeding from which the appeal arose.

Note For service of the notice, see pt 8 (Service of non-emergency protection orders).

99 Evidence on appeal

In an appeal, the Supreme Court must consider the evidence given in the proceeding from which the appeal arose, and has power to draw inferences of fact and, in its discretion, to receive further evidence.

100 Powers of Supreme Court on appeal

On an appeal, the Supreme Court may—

- (a) confirm, reverse or amend the decision or order appealed from; or
- (b) make the decision or order that, in all the circumstances, it considers appropriate, or refuse to make an order; or
- (c) set aside the decision or order appealed from, completely or partly, and remit the proceedings to the Magistrates Court for further hearing, subject to the directions the Supreme Court considers appropriate.

101 Effect of filing appeal

The filing of an appeal against the making or amending of an order under this Act does not affect the operation of the order appealed against.

Part 12 Reciprocal arrangements

102 Definitions—pt 12

In this part:

recognised court means a court of a State, another Territory or New Zealand that may make a recognised order.

recognised order means an order, under a law of a State, another Territory or New Zealand, that corresponds to a protection order.

registered order—

- (a) means a recognised order registered under section 104 (Registration of recognised orders) or section 108 (Amendment of recognised orders); and
- (b) includes a registered order amended as if it were a final order.

103 Applications for registration of recognised orders

- (1) A person may apply to the registrar for registration of a recognised order.

Note If a form is approved under the *Court Procedures Act 2004* for an application under this section, the form must be used.

- (2) The application must be accompanied by the recognised order or a certified copy of the recognised order.

104 Registration of recognised orders

- (1) On receiving an application under section 103 for registration of a recognised order, the registrar must register the order.
- (2) If the registrar registers a recognised order, the registrar must—
 - (a) give the chief police officer a copy of—
 - (i) the application for registration; and

- (ii) the registered order; and
- (b) tell the recognised court, in writing, that the order has been registered.

Note Under the *Electronic Transactions Act 2001*, s 8 (1), information required to be in writing may be given electronically in certain circumstances.

105 Effect of registration

A registered order—

- (a) is enforceable in the ACT as if it were a final order that had been personally served on the respondent; and
- (b) may be amended or revoked in the same way as a final order.

106 Amendment of registered orders

If a registered order is amended under this Act, the registrar must tell the recognised court that made the order, in writing, about the amendment.

Note Under the *Electronic Transactions Act 2001*, s 8 (1), information required to be in writing may be given electronically in certain circumstances.

107 Revocation of registered orders

- (1) This section applies if a recognised court tells the registrar that a registered order has been revoked.
- (2) The registrar must—
 - (a) cancel the registration of the registered order; and
 - (b) tell the chief police officer and the person for whose benefit the recognised order was registered about the cancellation.

108 Amendment of recognised orders

- (1) This section applies if a recognised court tells the registrar that a recognised order (the *original order*) registered under this part has been amended.
- (2) The registrar must—
 - (a) cancel the registration of the original order; and
 - (b) register the recognised order (the *amended order*) as amended.
- (3) The amended order takes effect on the cancellation of the registration of the original order.
- (4) If a breach of the original order that is not enforced before the original order is cancelled would amount to a breach of the amended order, the breach may be enforced as if it were a breach of the amended order.

109 Notification by interstate court of registration

- (1) This section applies if—
 - (a) a recognised court tells the Magistrates Court that it has registered a protection order; and
 - (b) the Magistrates Court amends or revokes the order.
- (2) The Magistrates Court must—
 - (a) tell the recognised court, in writing, that the order has been amended or revoked; and
 - (b) if the order has been amended—give the recognised court a copy of the order as amended.

Note Under the *Electronic Transactions Act 2001*, s 8 (1), information required to be in writing may be given electronically in certain circumstances.

110 Evidence of registered orders

- (1) A registered order is admissible in evidence in a court by the production of a copy of the registered order certified as a true copy by the registrar.
- (2) The copy is evidence of the matters stated in the registered order.

Part 13 Public access and publication

111 Publication of reports about proceedings—offence

- (1) A person commits an offence if—
- (a) the person publishes (completely or partly) an account or report of a proceeding on an application for a protection order; and
 - (b) the account or report—
 - (i) identifies a party to the proceeding; or
 - (ii) identifies a person who is related to, or associated with, a party to the proceeding or is, or is claimed to be, in any other way concerned in the matter to which the proceeding relates; or
 - (iii) identifies a witness to the proceeding; or
 - (iv) allows the identity of a person mentioned in subparagraph (i), (ii) or (iii) to be worked out.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

Note Section 112 contains exceptions to an offence under s (1).

- (2) In this section:

publish means communicate or disseminate information in a way or to an extent that makes it available to, or likely to come to the notice of, the public or a section of the public or anyone else not lawfully entitled to the information.

112 Publication of reports about proceedings—exceptions to offence

- (1) Section 111 does not prevent a party to a proceeding on an application for a protection order from telling someone else about the contents of a protection order made in the proceeding.
- (2) Section 111 does not prevent the publication of an account or report of a proceeding on an application for a protection order if the publication is a permitted publication about proceedings mentioned in schedule 2, section 2.2.
- (3) The Magistrates Court may make an order allowing circulation of, or a magistrate may give permission to circulate, information the publication of which would otherwise contravene section 111 (1) only if satisfied that—
 - (a) it is in the public interest; or
 - (b) it will promote compliance with the protection order; or
 - (c) it is necessary or desirable for the proper functioning of this Act.

Part 14 Miscellaneous

113 Deciding application if criminal proceedings

The power of the Magistrates Court or a judicial officer to make a protection order in relation to a person may be exercised even if the person has been charged with, or convicted or found guilty of, an offence arising out of the same conduct as that out of which the application under this Act arose.

114 Crimes Act, s 397 (1)

This Act does not affect the operation of the *Crimes Act 1900*, section 397 (1) (which deals with the making of recognisances to keep the peace).

115 Working out time if less than 5 days

If a period of less than 5 days is prescribed under this Act, the period is to be worked out ignoring any day when the Magistrates Court is not open for business.

116 Directions about procedure

(1) If the procedure for taking a step in a proceeding is not prescribed under this Act, the Chief Magistrate may give directions about the procedure to be followed for the step.

(2) A direction is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

(3) If the procedure for taking a step in a proceeding is not prescribed under this Act (including under a direction mentioned under subsection (1)), the Magistrates Court may give directions about the procedure to be followed in relation to the step.

117 Recovery of certain expenses

- (1) This section applies if the Magistrates Court is satisfied that—
 - (a) an application is frivolous, vexatious or has not been made honestly; and
 - (b) someone (the *person put to expense*) other than the applicant has reasonably incurred expenses in relation to the proceeding on the application.
- (2) The Magistrates Court may order the applicant to pay to the person put to expense an amount, not more than the expenses incurred, that the court considers reasonable.
- (3) The amount stated in the order—
 - (a) is a debt owed by the applicant to the person put to expense; and
 - (b) is a judgment debt enforceable in accordance with the rules under the *Court Procedures Act 2004* applying in relation to the civil jurisdiction of the Magistrates Court.
- (4) For this section:

expenses incurred, by someone in a proceeding, include fees payable by the person to a lawyer in relation to the proceeding.

118 Regulation-making power

- (1) The Executive may make regulations for this Act.

Note A regulation must be notified, and presented to the Legislative Assembly, under the Legislation Act.
- (2) A regulation may deal with the following:
 - (a) the admissibility of evidence in proceedings;
 - (b) when and how warrants may be issued;

- (c) what parties may be joined in proceedings, and how they may be joined;
- (d) when orders are made;
- (e) service;
- (f) discontinuance and withdrawal of proceedings;
- (g) the particulars parties are required to plead in proceedings, generally and in relation to particular claims or defences;
- (h) how particulars must be pleaded and when further or better particulars must be given;
- (i) interlocutory proceedings, including the following:
 - (i) how interlocutory applications may be made and heard;
 - (ii) how documents in proceedings may be amended;
 - (iii) how proceedings may be summarily stayed or dismissed;
 - (iv) how admissions may be made;
 - (v) the making, filing and answering of interrogatories;
 - (vi) how discovery may be applied for and made;
 - (vii) the inspection of documents;
- (j) how witnesses may be summoned;
- (k) the powers of the Magistrates Court in relation to making decisions and when decisions take effect;
- (l) the powers of the Magistrates Court to set aside orders;
- (m) the jurisdiction of the registrar and deputy registrars;
- (n) when costs may be ordered and how they may be recovered.

- (3) A regulation may set out the procedures to be followed under this Act, including procedures in relation to the following:
- (a) the holding of preliminary conferences;
 - (b) representation, including—
 - (i) the appointment of litigation guardians; and
 - (ii) how respondents may defend actions;
 - (c) the adjournment, staying, dismissal or postponement of proceedings;
 - (d) hearings;
 - (e) giving judgment.
- (4) A regulation may create offences and fix maximum penalties of not more than 10 penalty units for the offences.

Part 20 Transitional

200 Definitions—pt 20

In this part:

commencement day means the day this Act commences.

repealed Act means the *Domestic Violence and Protection Orders Act 2001*.

201 Legislation repealed

- (1) The following legislation is repealed:
 - *Domestic Violence and Protection Orders Act 2001* (A2001-89);
 - *Domestic Violence and Protection Orders Regulation 2002* (SL2002-6).
- (2) All other legislative instruments under the *Domestic Violence and Protection Orders Act 2001* (A2001-89) are repealed.

202 Construction of outdated references

- (1) In any Act, instrument made under an Act or a document, a reference to the repealed Act is, in relation to anything to which this Act applies, a reference to this Act.
- (2) In any Act, instrument made under an Act or a document, a reference to a provision of the repealed Act is, in relation to anything to which this Act applies, a reference to the corresponding provision of this Act.

- (3) In any Act, instrument made under an Act or a document, a reference to anything that is no longer applicable because of the repeal or amendment of the repealed Act by this Act and for which there is a corresponding thing under this Act, is taken to be a reference to the corresponding thing under this Act, if the context allows and if otherwise appropriate.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

203 Applications for protection orders made but not heard under repealed Act

- (1) This section applies if—
- (a) an application for a protection order was made under the repealed Act; and
 - (b) immediately before the commencement day, the Magistrates Court had not begun hearing the application.
- (2) The application is taken to be an application for a protection order under this Act.

204 Proceedings begun under repealed Act

- (1) This section applies to a proceeding on an application for a protection order begun, but not decided, before the commencement day.
- (2) The proceeding is taken to be a proceeding on an application for a protection order under this Act.
- (3) If a step that should have been taken under this Act has not been taken because the proceeding was begun under the repealed Act—
- (a) the proceeding is not affected; and

- (b) the Magistrates Court may take the steps it considers appropriate to decide the application that is the subject of the proceeding, to the extent practicable, in accordance with this Act.

205 Application for amendment or revocation under repealed Act

- (1) This section applies to an application under the repealed Act, section 13 (Who may apply to amend or revoke protection order?) to amend or revoke a protection order made, but not decided, before the commencement day.
- (2) The application is taken to be an application under this Act, section 91 (1) (Application for review of particular final orders).

206 Application by respondent for leave to apply for amendment or revocation under repealed Act

- (1) This section applies to an application by a respondent under the repealed Act, section 30A (Application by respondent for leave to apply for amendment or revocation) for leave to apply for amendment or revocation of a protection order.
- (2) The application is taken to be an application under this Act, section 91 (3) (Application for review of particular final orders).

207 Existing protection orders under repealed Act

A protection order in force under the repealed Act immediately before the commencement day is taken to be a protection order made under this Act.

208 Review of consent orders under repealed Act

- (1) This section applies if—
 - (a) a party to a proceeding applied to the Magistrates Court under the repealed Act, section 77 (Review of consent orders) for review of a consent order; and
 - (b) immediately before the commencement day, the Magistrates Court had not begun hearing the application.
- (2) The application is taken to be an application under section 95 (Review of consent orders).

209 Appeals under repealed Act

- (1) This section applies if—
 - (a) a person filed a notice of appeal in the Supreme Court under the repealed Act, section 79 (When can someone appeal to the Supreme Court?); and
 - (b) immediately before the commencement day, the Supreme Court had not begun hearing the appeal.
- (2) The notice of appeal is taken to be a notice under section 97 (When can someone appeal to the Supreme Court?).

210 Protection of proceedings under repealed Act

- (1) A proceeding to which the repealed Act, section 100 (Restriction on publication of reports about proceedings) applied immediately before the commencement day is taken to be a proceeding to which section 111 (Publication of reports about proceedings—offence) of this Act applies.
- (2) Subsection (1) is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

211 Application for registration of recognised order under repealed Act

- (1) This section applies if—
 - (a) a person had applied under the repealed Act, section 85 (Application for registration of recognised order); and
 - (b) immediately before the commencement day, the registrar had not registered the order or taken any other action required under that Act, section 85 (2).
- (2) The application is taken to have been made under section 103 (Applications for registration of recognised orders).

212 Registration of recognised orders under repealed Act

A registered order in force under the repealed Act, section 84 (Definitions for pt 9) immediately before the commencement day is taken to be a registered order under section 102 (Definitions—pt 12).

213 Amendment or revocation of recognised order under repealed Act

- (1) This section applies if—
 - (a) a recognised court told the registrar that a recognised order registered under the repealed Act, part 9 (Reciprocal arrangements) had been amended or revoked; and
 - (b) immediately before the commencement day, the registrar had not taken action under the repealed Act in relation to the information.
- (2) The registrar must take action under this Act as if the registrar had been told the information after the commencement day.

214 Amendment or revocation of recognised order by Magistrates Court under repealed Act

- (1) This section applies if, immediately before the commencement day—
 - (a) a recognised court had told the Magistrates Court that it had registered a protection order; and
 - (b) the Magistrates Court had amended or revoked the order but—
 - (i) had not told the recognised court that the order was amended or revoked; or
 - (ii) if the order was amended, had not given the recognised court a copy of the order as amended.
- (2) The Magistrates Court must take action in relation to the amendment or revocation as if it had happened after the commencement day.

215 Transitional regulations

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of this Act.
- (2) A regulation may modify this part (including in relation to another territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this part.
- (3) A regulation under subsection (2) has effect despite anything elsewhere in this Act.

216 Expiry—pt 20

This part expires 1 year after the day it commences.

217 Legislation amended—sch 3

This Act amends the legislation mentioned in schedule 3.

Schedule 1 Domestic violence offences against other legislation

(see s 13 (2))

1.1 Definitions—sch 1

In this schedule:

Crimes Act means the *Crimes Act 1900*.

Firearms Act means the *Firearms Act 1996*.

Public Order Act means the *Public Order (Protection of Persons and Property) Act 1971* (Cwlth).

RT (S and TM) Act means the *Road Transport (Safety and Traffic Management) Act 1999*.

1.2 Domestic violence offences against other legislation

Table 1.2

column 1 item	column 2 legislation	column 3 provision	column 4 description of offence
1	Crimes Act	12	murder
2	Crimes Act	15	manslaughter
3	Crimes Act	19	intentionally inflicting grievous bodily harm
4	Crimes Act	20	recklessly inflicting grievous bodily harm
5	Crimes Act	21	wounding
6	Crimes Act	22	assault with intent to commit certain indictable offences
7	Crimes Act	23	inflicting actual bodily harm
8	Crimes Act	24	assault occasioning actual bodily harm
9	Crimes Act	25	causing grievous bodily harm
10	Crimes Act	26	common assault
11	Crimes Act	26A	common assault—summary offence

column 1 item	column 2 legislation	column 3 provision	column 4 description of offence
12	Crimes Act	27	acts endangering life etc
13	Crimes Act	28	acts endangering health etc
14	Crimes Act	29	culpable driving of motor vehicle
15	Crimes Act	30	threat to kill
16	Crimes Act	31	threat to inflict grievous bodily harm
17	Crimes Act	32 (1) (a)	make demand with threat to kill or inflict grievous bodily harm
18	Crimes Act	32 (2) (a)	make demand with threat to endanger health etc
19	Crimes Act	33	possession of object with intent to kill etc
20	Crimes Act	34	forcible confinement
21	Crimes Act	35	stalking
22	Crimes Act	37	abduction of young person
23	Crimes Act	38	kidnapping
24	Crimes Act	51	sexual assault in the first degree
25	Crimes Act	52	sexual assault in the second degree
26	Crimes Act	53	sexual assault in the third degree
27	Crimes Act	54	sexual intercourse without consent
28	Crimes Act	55	sexual intercourse with young person
29	Crimes Act	57	act of indecency in the first degree
30	Crimes Act	58	act of indecency in the second degree
31	Crimes Act	59	act of indecency in the third degree
32	Crimes Act	60	act of indecency without consent
33	Crimes Act	61	acts of indecency with young people
34	Crimes Act	62	incest or similar offences
35	Crimes Act	63	abduction
36	Crimes Act	116	destroying or damaging property
37	Crimes Act	117	arson
38	Crimes Act	151	forcible entry on land
39	Crimes Act	154 (1)	trespass on government premises
40	Crimes Act	154 (2) (a)	engage in unreasonable obstruction etc in relation to the use of government premises

Schedule 1 Domestic violence offences against other legislation

Section 1.2

column 1 item	column 2 legislation	column 3 provision	column 4 description of offence
41	Crimes Act	154 (2) (b)	behave in an offensive or disorderly manner while in or on government premises
42	Crimes Act	154 (2) (c)	refuse or neglect to leave government premises when directed
43	Crimes Act	380	possession of offensive weapons and disabling substances
44	Crimes Act	381	possession of offensive weapons and disabling substances with intent
45	Crimes Act	392	offensive behaviour
46	Criminal Code	311	burglary
47	Criminal Code	316	going equipped with offensive weapon for theft etc
48	Criminal Code	403	damaging property
49	Criminal Code	404	arson
50	Criminal Code	405	causing bushfires
51	Criminal Code	406	threat to cause property damage—fear of death or serious harm
52	Criminal Code	407	threat to cause property damage
53	Criminal Code	408	possession of thing with intent to damage property
54	RT (S and TM) Act	6 (1)	negligent driving
55	RT (S and TM) Act	7 (1)	furiously reckless or dangerous driving
56	RT (S and TM) Act	8 (1) or (2)	menacing driving
57	Firearms Act	53	unregistered firearms
58	Firearms Act	80	discharge of firearms or possession endangering life
59	Public Order Act	11	offences on premises in a Territory

Schedule 2 Permitted publication about proceedings

(see s 112 (2))

2.1 Definitions—sch 2

In this schedule:

authorised person under the *Children and Young People Act 2008*—see the *Children and Young People Act 2008*, dictionary.

care and protection chapters—see the *Children and Young People Act 2008*, dictionary.

2.2 Permitted publication about proceedings

Table 2.2

column 1 item	column 2 permitted publication about proceedings
1	information circulated in accordance with— (a) an order of the Magistrates Court; or (b) the written permission of a magistrate
2	information communicated to a court or tribunal under the <i>Family Law Act 1975</i> (Cwlth), section 60CF (1) or (2) (Informing court of relevant family violence orders)
3	information given to a criminal justice entity under the <i>Crimes (Sentencing) Act 2005</i> , section 136 (Information exchanges between criminal justice entities)
4	information given to the chief executive in relation to the exercise of the chief executive's functions

Schedule 2 Permitted publication about proceedings

Section 2.2

column 1 item	column 2 permitted publication about proceedings
5	information given to the chief executive responsible for, or an authorised person under, the <i>Children and Young People Act 2008</i> to allow the chief executive to exercise the chief executive's powers under the care and protection chapters of that Act
6	information given to the public advocate in relation to the exercise of the public advocate's functions
7	a pleading, transcript of evidence or other document communicated to— <ul style="list-style-type: none">(a) people concerned with any other proceeding in a court or tribunal for use in relation to that proceeding; or(b) people concerned with the disciplinary proceeding of a lawyer, for use in relation to that proceeding; or(c) an entity that grants legal aid, to help decide whether to provide legal aid in a particular case
8	matter published in law reports or other technical or professional publications
9	matter given to someone in relation to the person's professional practice
10	information about a party to a proceeding, or a protection order made in the proceeding, communicated to another person, with the party's permission, for the purpose of organising the party's personal affairs

Schedule 3 Consequential amendments

(see s 217)

Part 3.1 Bail Act 1992

[3.1] Section 9B (b) (iv)

substitute

- (iv) an offence against the *Domestic Violence and Protection Orders Act 2008*, section 90 (Offence for contravention of protection order); or

[3.2] Section 9F (6), definition of *relevant person*

substitute

relevant person—see the *Domestic Violence and Protection Orders Act 2008*, dictionary.

Note The *Domestic Violence and Protection Orders Act 2008*, s 15 (1) defines a ***relevant person*** in relation to a person (the ***original person***) as any of the following people:

- a domestic partner of the original person (***domestic partner*** is defined in the Legislation Act, s 169 (1))
- a relative of the original person (***relative*** is defined in the *Domestic Violence and Protection Orders Act 2008*, s 15 (2))
- a child of a domestic partner of the original person
- a parent of a child of the original person
- someone who has or had a domestic relationship with the original person.

[3.3] Dictionary, definition of *domestic violence offence*

omit

Domestic Violence and Protection Orders Act 2001

substitute

Domestic Violence and Protection Orders Act 2008

Part 3.2 Children and Young People Act 2008

[3.4] Section 457, definition of *domestic violence*, paragraph (a)

substitute

- (a) see the *Domestic Violence and Protection Orders Act 2008*, section 13 (1); and

[3.5] Section 459 (1), note

omit

Domestic Violence and Protection Orders Act 2001, s 40

substitute

Domestic Violence and Protection Orders Act 2008, s 46

[3.6] Section 462 (3)

omit

Domestic Violence and Protection Orders Act 2001, section 13 (Who may apply to amend or revoke a protection order?)

substitute

Domestic Violence and Protection Orders Act 2008, section 91 (Application for review of particular final orders)

[3.7] Section 462 (5), example

omit

Domestic Violence and Protection Orders Act 2001, s 53 (c)

substitute

Domestic Violence and Protection Orders Act 2008, s 38 (c)

[3.8] Further amendments, mentions of *Domestic Violence and Protection Orders Act 2001*

omit

Domestic Violence and Protection Orders Act 2001

substitute

Domestic Violence and Protection Orders Act 2008

in

- section 457, definitions of *DVPO final protection order* and *DVPO interim protection order*
- section 459 (3) and (4), definition of *personal violence*
- section 461 (3)
- section 462
- section 834 (1) (b).

Part 3.3 Court Procedures Act 2004

[3.9] Section 15 (2) (c) (iv) (C)

substitute

(C) the *Domestic Violence and Protection Orders Act 2008*;

Part 3.4 Crimes Act 1900

[3.10] Section 191 (4) (b)

omit

Domestic Violence and Protection Orders Act 2001

substitute

Domestic Violence and Protection Orders Act 2008

[3.11] Section 192 (1)

omit everything before paragraph (a), insert

- (1) In enforcing an order under the *Domestic Violence and Protection Orders Act 2008*, section 40 (5) (Firearms and interim orders), section 57 (5) (Firearms and final orders) or section 80 (2) (Firearms and emergency orders), a police officer may—

[3.12] Section 192 (5) (b)

omit

Domestic Violence and Protection Orders Act 2001, section 38, section 57 or section 73

insert

Domestic Violence and Protection Orders Act 2008, section 40, section 57 or section 80

[3.13] Section 212 (5), definition of *domestic violence offence*

omit

Domestic Violence and Protection Orders Act 2001

substitute

Domestic Violence and Protection Orders Act 2008

Part 3.5 **Crimes (Restorative Justice) Act 2004**

[3.14] Section 12, definition of *domestic violence offence*

omit

Domestic Violence and Protection Orders Act 2001

substitute

Domestic Violence and Protection Orders Act 2008

Part 3.6 **Crimes (Sentencing) Act 2005**

[3.15] Section 3, note 1

omit

Domestic Violence and Protection Orders Act 2001, section 9 (2)

substitute

Domestic Violence and Protection Orders Act 2008, s 13 (2)

[3.16] Dictionary, definition of *domestic violence offence*

omit

Domestic Violence and Protection Orders Act 2001, section 9 (2)

substitute

Domestic Violence and Protection Orders Act 2008, section 13 (2)

Part 3.7 Dangerous Substances Act 2004

[3.17] Section 49 (2), definition of *protection order*

omit

Domestic Violence and Protection Orders Act 2001

substitute

Domestic Violence and Protection Orders Act 2008

Part 3.8 Domestic Violence Agencies Act 1986

[3.18] Section 2, note 1

omit

Domestic Violence and Protection Orders Act 2001, section 9 (1)

substitute

Domestic Violence and Protection Orders Act 2008, s 13 (1)

[3.19] Dictionary, definition of *domestic violence*

omit

Domestic Violence and Protection Orders Act 2001, section 9 (1)

substitute

Domestic Violence and Protection Orders Act 2008, section 13 (1)

[3.20] Dictionary, definition of *domestic violence offence*

omit

Domestic Violence and Protection Orders Act 2001

substitute

Domestic Violence and Protection Orders Act 2008

Part 3.9 Evidence (Miscellaneous Provisions) Act 1991

[3.21] Section 7 (c)

omit

Domestic Violence and Protection Orders Act 2001

substitute

Domestic Violence and Protection Orders Act 2008

[3.22] Section 40B (1), definition of *sexual offence proceeding*, paragraph (c)

omit

Domestic Violence and Protection Orders Act 2001

substitute

Domestic Violence and Protection Orders Act 2008

[3.23] Section 40C (1), definition of *violent offence proceeding*, paragraph (c)

omit

Domestic Violence and Protection Orders Act 2001

substitute

Domestic Violence and Protection Orders Act 2008

[3.24] Section 40O (1), definition of *sexual offence proceeding*, paragraph (c)

omit

Domestic Violence and Protection Orders Act 2001

substitute

Domestic Violence and Protection Orders Act 2008

[3.25] Section 41A (1), definition of *violent offence proceeding*, paragraph (c)

omit

Domestic Violence and Protection Orders Act 2001

substitute

Domestic Violence and Protection Orders Act 2008

Part 3.10 Firearms Act 1996

[3.26] Section 40A (1), note 2

omit

Domestic Violence and Protection Orders Act 2001, s 57 (Firearms and interim orders)

substitute

Domestic Violence and Protection Orders Act 2008, s 40 (Firearms and interim orders)

[3.27] Section 40A (1), note 3

omit

Domestic Violence and Protection Orders Act 2001, s 73 (Firearms and emergency orders)

substitute

Domestic Violence and Protection Orders Act 2008, s 80 (Firearms and emergency orders)

[3.28] Section 41 (2), note 2

omit

Domestic Violence and Protection Orders Act 2001, s 38 (Firearms and final orders)

substitute

Domestic Violence and Protection Orders Act 2008, s 57 (Firearms and final orders)

[3.29] Section 42Q (1), note 2

omit

Domestic Violence and Protection Orders Act 2001, s 57 (Firearms and interim orders)

substitute

Domestic Violence and Protection Orders Act 2008, s 40 (Firearms and interim orders)

[3.30] Section 42Q (1), note 3

omit

Domestic Violence and Protection Orders Act 2001, s 73 (Firearms and emergency orders)

substitute

Domestic Violence and Protection Orders Act 2008, s 80 (Firearms and emergency orders)

[3.31] Section 42R (d), note 2

omit

Domestic Violence and Protection Orders Act 2001, s 38 (Firearms and final orders)

substitute

Domestic Violence and Protection Orders Act 2008, s 57 (Firearms and final orders)

[3.32] Section 42ZMA (1), note 2

omit

Domestic Violence and Protection Orders Act 2001, s 57 (Firearms and interim orders)

substitute

Domestic Violence and Protection Orders Act 2008, s 40 (Firearms and interim orders)

[3.33] Section 42ZMA (1), note 3

omit

Domestic Violence and Protection Orders Act 2001, s 73 (Firearms and emergency orders)

substitute

Domestic Violence and Protection Orders Act 2008, s 80 (Firearms and emergency orders)

[3.34] Section 42ZN (2), note 2

omit

Domestic Violence and Protection Orders Act 2001, s 38 (Firearms and final orders)

substitute

Domestic Violence and Protection Orders Act 2008, s 57 (Firearms and final orders)

[3.35] Section 42ZRA (c), note 2

omit

Domestic Violence and Protection Orders Act 2001, s 38 (Firearms and final orders)

substitute

Domestic Violence and Protection Orders Act 2008, s 57 (Firearms and final orders)

[3.36] Dictionary, definition of *domestic violence offence*

omit

Domestic Violence and Protection Orders Act 2001

substitute

Domestic Violence and Protection Orders Act 2008

[3.37] Dictionary, definition of *interim protection order*, paragraph (a)

omit

Domestic Violence and Protection Orders Act 2001

substitute

Domestic Violence and Protection Orders Act 2008

[3.38] Dictionary, definition of *protection order*, paragraph (a)

omit

Domestic Violence and Protection Orders Act 2001

substitute

Domestic Violence and Protection Orders Act 2008

Part 3.11 Firearms Regulation 1997

[3.39] Section 29 (2) (b) (xi) (B)

omit

Domestic Violence and Protection Orders Act 2001

substitute

Domestic Violence and Protection Orders Act 2008

Part 3.12 Magistrates Court Act 1930

[3.40] Section 256 (a)

omit

Domestic Violence and Protection Orders Act 2001

substitute

Domestic Violence and Protection Orders Act 2008

Part 3.13 Prohibited Weapons Regulation 1997

[3.41] Section 5 (6), definition of *interim protection order*

omit

Domestic Violence and Protection Orders Act 2001

substitute

Domestic Violence and Protection Orders Act 2008

[3.42] Section 5 (6), definition of *protection order*

omit

Domestic Violence and Protection Orders Act 2001

substitute

Domestic Violence and Protection Orders Act 2008

Dictionary

(see s 3)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- document
- domestic partner (see s 169)
- exercise
- Magistrates Court
- penalty unit (see s 133)
- police officer
- Supreme Court.

aggrieved person means—

- (a) for a domestic violence order or personal protection order—a person against whom the conduct that may be domestic or person violence has been, or is likely to be, directed; or
- (b) for a workplace order—see section 49.

amend an order includes amend the order by extending it.

ammunition—see the *Firearms Act 1996*, dictionary.

appealable decision means a decision mentioned in section 96.

application means an application for a protection order (other than an interim order).

Note 1 As a protection order includes an order amending a protection order, an application includes an application to amend a protection order.

Note 2 An interim order may only be made as an interlocutory step in a proceeding on an application for a final order, so there is not a separate application for an interim order.

child, of a person, includes—

- (a) a child who normally lives with the person; and
- (b) a child for whom the person is a guardian.

Note A child is someone under 18 years old (see Legislation Act, dict, pt 1).

child facility—see section 49.

consent order means a protection order made under section 43.

copy, in relation to a document to be served in a proceeding, means—

- (a) if the document has been entered into the record of the Magistrates Court—a true copy sealed or stamped with the seal of the court; or
- (b) in any other case—a true copy.

disability guardian, of a person—see the *Guardianship and Management of Property Act 1991*, dictionary, definition of **guardian**.

domestic partner includes a former domestic partner.

domestic violence—see section 13 (1).

domestic violence offence—see section 13 (2).

domestic violence order—see section 10 (2).

emergency order means an order under part 9, and includes an order amending or revoking an emergency order if made outside the Magistrates Court's sitting hours.

employee means an individual engaged by someone—

- (a) under a contract of service; or
- (b) under a contract for services; or
- (c) under an apprenticeship; or
- (d) under an approved training contract under the *Training and Tertiary Education Act 2003*; or
- (e) to work for the person as a volunteer.

employer means someone who engages an individual—

- (a) under a contract of service; or
- (b) under a contract for services; or
- (c) under an apprenticeship; or
- (d) under an approved training contract under the *Training and Tertiary Education Act 2003*; or
- (e) to work as a volunteer.

family contact order, in relation to a protection order under this Act, means an order or injunction mentioned in the *Family Law Act 1975* (Cwlth), section 68P (1) (a) that—

- (a) provides for a child to spend time with a person; or
- (b) expressly or impliedly requires or authorises a person to spend time with a child.

final order means a protection order that is not an interim order or emergency order, and includes an order amending a final order.

firearm—see the *Firearms Act 1996*, section 4A.

firearms licence—see the *Firearms Act 1996*, dictionary, definition of *licence*.

interim order means a protection order made under part 4 (Interim orders) or a consent order made as an interim order, and includes an order (other than a final order) that amends or revokes an interim order.

judicial officer means any of the following:

- (a) a magistrate;
- (b) if a regulation provides for the exercise of the Magistrate's Court's jurisdiction by the registrar, the registrar;
- (c) if a regulation provides for the exercise of the Magistrate's Court's jurisdiction by a deputy registrar, a deputy registrar.

non-emergency protection order means a protection order, other than an emergency order.

personal protection order—see section 11 (4).

personal violence—

- (a) for this Act generally—see section 14; and
- (b) for division 6.2 (Workplace orders)—see section 50.

person with a legal disability means—

- (a) a child; or
- (b) a person with a mental disability.

person with a mental disability, in relation to a proceeding, means a person who is not legally competent to be a party to the proceeding because of a mental or intellectual disability, and includes such a person even if a disability guardian has not been appointed for the person.

protection order means a domestic violence order or a personal protection order, and includes—

- (a) an interim order; and
- (b) an emergency order; and
- (c) a workplace order; and
- (d) an order about the seizure of a firearms licence, firearm or ammunition; and
- (e) an order amending a protection order, including an order for a temporary amendment under section 60.

recognised court, for part 12 (Reciprocal arrangements)—see section 102.

recognised order, for part 12 (Reciprocal arrangements)—see section 102.

registered order, for part 12 (Reciprocal arrangements)—see section 102.

registrar—see the *Magistrates Court Act 1930*, dictionary.

relative—see section 15 (2).

relevant person—see section 15 (1).

respondent—see section 9 (1).

return date, for an application, means the day fixed by the Magistrates Court for return of the application before the court.

sitting hours, of the Magistrates Court, means the time, on a day when the court is open for business, between the earliest and latest times that the court would normally sit on that day.

workplace order means an order under division 6.2 (Workplace orders).

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 7 August 2008.

2 Notification

Notified under the Legislation Act on 10 September 2008.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Domestic Violence and Protection Orders Bill 2008, which was passed by the Legislative Assembly on 26 August 2008.

Clerk of the Legislative Assembly

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